
Declaration of Susan B. Mindenbergs

Exhibit 1

HONORABLE RONALD B. LEIGHTON

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

WENDY SNELL, et al.,

Plaintiffs,

v.

NORTH THURSTON SCHOOL
DISTRICT,

Defendant.

CASE NO. C13-5488 RBL

ORDER GRANTING PLAINTIFFS'
MOTION FOR ATTORNEYS' FEES

[DKT. #20]

THIS MATTER is before the Court on Plaintiffs' Motion for attorneys' fees under the IDEA [Dkt. #20]. Plaintiff Snell argues that she (and her daughter) prevailed on their IDEA claim, and she seeks \$184,833.20 in fees and costs. [See Dkt. # 21 at 6]

The North Thurston School District points out that Snell did not prevail on the bulk of her claims, and that even the relief she did obtain was only a third of what she sought. It claims that the hours sought are excessive, but does not articulate what might be a reasonable amount. It also asks the Court to defer ruling on the attorneys' fee issue until the Ninth Circuit's review of the Court's underlying order is complete.

1 The first step in determining reasonable fees is to calculate the lodestar figure, by taking
 2 the number of hours reasonably expended on the litigation and multiplying it by the appropriate
 3 hourly rate. *Hensley v. Eckerhart*, 461 U.S. 424, 433 (1983). The Court should exclude
 4 overstaffed, redundant, or unnecessary time. *Id.* at 434. The Court must also consider the extent
 5 of Plaintiffs' success, as that is a "crucial factor" in determining an appropriate award. *Id.* at
 6 440.

7 After determining the lodestar figure, the Court should then determine whether to adjust
 8 the lodestar figure up or down, based on factors not subsumed in the lodestar figure. These
 9 factors¹ were adopted in this Circuit by *Kerr v. Screen Extras Guild, Inc.*, 526 F.2d 67, 69-70
 10 (9th Cir. 1975) *cert. denied*, 425 U.S. 951 (1976). The applicability of the sixth (whether the fee
 11 is fixed or contingent) and tenth (the "undesirability" of the case) *Kerr* factors is doubtful after
 12 *City of Burlington v. Dague*, 505 U.S. 557 (1992); *see also Davis v. City & County of San*
 13 *Francisco*, 976 F.2d 1536, 1549 (9th Cir. 1992), *vacated in part on other grounds*, 984 F.2d 345
 14 (9th Cir. 1993)(fixed vs. contingent nature of fee is not to be considered). Additionally,
 15 numerous courts have subsequently held that the bulk of these factors are subsumed in the
 16 lodestar calculation. *See, for example, Blum v. Stenson*, 465 U.S. 886, 898-900 (1984).

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 21 ¹ The *Kerr* factors are: (1) the time and labor required, (2) the novelty and difficulty of the
 22 questions involved, (3) the skill requisite to perform the legal service properly, (4) the preclusion
 23 of other employment by the attorney due to acceptance of the case, (5) the customary fee, (6)
 24 whether the fee is fixed or contingent, (7) time limitations imposed by the client or the
 circumstances, (8) the amount involved and the results obtained, (9) the experience, reputation,
 and ability of the attorneys, (10) the 'undesirability' of the case, (11) the nature and length of the
 professional relationship with the client, and (12) awards in similar cases. *Kerr v. Screen Extras*
Guild, Inc., 526 F.2d 67, 69-70 (9th Cir. 1975), *cert. denied*, 425 U.S. 951 (1976).

1 In any event, the lodestar calculation is presumptively reasonable, and adjustments (up
 2 are down) are appropriate only in rare and exceptional cases. *Id.*, see also *Pennsylvania v.*
 3 *Delaware Valley Citizens' Council for Clean Air*, 483 U.S. 711, 728 (1987).

4 The lodestar calculation is similarly the starting point for determining a reasonable fee
 5 under Washington law. *Scott Fetzer v. Weeks*, 114 Wn.2d 109, 786 P.2d 265 (1990); *Absher*
 6 *Constr. v. Kent Sch. Dist. No. 415*, 79 Wash. App. 841, 847, 917 P.2d 1086 (1995).

7 Washington's RPC 1.5 lists factors to be considered in evaluating the reasonableness of an
 8 attorney's fee:

- 9 (1) the time and labor required, the novelty and difficulty of the questions involved, and
 10 the skill requisite to perform the legal service properly;
- 11 (2) the likelihood, if apparent to the client, that the acceptance of the particular
 employment will preclude other employment by the lawyer;
- 12 (3) the fee customarily charged in the locality for similar legal services;
- 13 (4) the amount involved and the results obtained;
- 14 (5) the time limitations imposed by the client or by the circumstances;
- 15 (6) the nature and length of the professional relationship with the client; and
- 16 (7) the experience, reputation, and ability of the lawyer or lawyers performing the
 17 services.

18 RPC 1.5(a) (1)-(7). These factors are consistent with current *Kerr* factors.

19 **A. Reasonable Hourly Rate.**

20 In determining hourly rates, the Court must look to the "prevailing market rates in the
 21 relevant community." *Bell v. Clackamas County*, 341 F.3d 858, 868 (9th Cir. 2003). The rates
 22 of comparable attorneys in the forum district are usually used. See *Gates v. Deukmejian*, 987
 23 F.2d 1392, 1405 (9th Cir. 1992). In making its calculation, the Court should also consider the
 24 experience, skill, and reputation of the attorney requesting fees. *Schwarz v. Sec'y of Health &*

1 *Human Servs.*, 73 F.3d 895, 906 (9th Cir. 1995). The Court may rely on its own knowledge and
2 familiarity with the legal market in setting a reasonable hourly rate. *Ingram v. Oroudjian*, 647
3 F.3d 925, 928 (9th Cir. 2011).

4 Plaintiff's primary attorney, Susan Mindenbergs, charges and requests \$375 per hour
5 (the same as the Defendant's primary attorney), and she seeks \$125 per hour for her paralegal's
6 time. Defendants do not challenge the reasonableness of these rates, and they are reasonable.

7 **B. Reasonable Number of Hours.**

8 Mindenbergs demonstrates that she spent 443.36 hours on this litigation, and her
9 paralegal spent 127.4. She spent an additional \$1806.25 obtaining the opinion of an outside
10 attorney, Jeffrey Needle. Needle opines, persuasively, that the rates and hours incurred by
11 Plaintiff's attorney were reasonable.

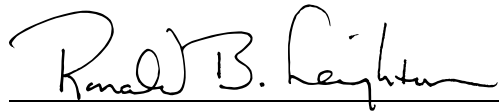
12 North Thurston's opposition relies on its claim that Snell did not prevail on more than
13 half of her claims, and that it incurred only about \$100,000 in fees on the whole case. It
14 apparently contends that its own fee demonstrates that the almost double number incurred by
15 Plaintiff was excessive. It also points to several events and the hours devoted to them that it
16 claims are excessive.

17 Snell's claim that she prevailed is not undermined by North Thurston's claim that she
18 wanted even more, and North Thurston has not demonstrated that the hours spent were
19 unproductive or otherwise excessive. The Court will not defer the award of fees to the "other
20 end" of the appeal. The fees and costs sought are reasonable under the relevant authorities, and
21 there is no compelling reason to reduce them.

1 The full amount of the fees and costs requested are awarded without deduction.

2 IT IS SO ORDERED.

3 Dated this 22nd day of May, 2014.

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5 RONALD B. LEIGHTON
6 UNITED STATES DISTRICT JUDGE
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Declaration of Susan B. Mindenbergs

Exhibit 2

SUSAN B. MINDENBERGS
ATTORNEY AT LAW
705 2ND AVENUE, SUITE 1050
SEATTLE, WA 98104

(206) 447-1560

Kimberly Johnson
886 Henry Lane
Camano Island, WA 98282

<u>Date</u>	<u>Attorney Activity</u>	<u>Hours</u>	<u>Rate</u>	
5/4/20	Research prejudgment interest	2.10	500.00	1,050.00
5/5/20	Draft adverse consequence brief	2.20	500.00	1,100.00
5/6/20	Draft adverse consequence brief	2.15	500.00	1,075.00
5/7/20	Edit petition for fees brief	3.10	500.00	1,550.00
5/8/20	Remove hours from fee petition	3.50	500.00	1,750.00
5/11/20	Revise motion for adverse tax consequences and prejudgment interest	1.50	500.00	750.00
5/12/20	Revise motion for adverse tax consequences and prejudgment interest	2.10	500.00	1,050.00
5/13/20	Categorize all hours in contemporaneous fee record	3.30	500.00	1,650.00
5/14/20	Final edit on post trial motions and declarations	2.10	500.00	1,050.00
5/23/20	Research issues and prepare reply document anticipating objections	2.30	500.00	1,150.00
5/25/20	Review all responsive documents from Defendant	1.50	500.00	750.00
5/26/20	Prepare draft reply to tax consequences motion	2.10	500.00	1,050.00
5/26/20	Prepare reply declaration to Defendant's response in opposition to fee petition	3.30	500.00	1,650.00
5/27/20	Prepare reply to Defendant's response to motion for adverse tax consequences	3.30	500.00	1,650.00
5/28/20	Finalize replies to Defendant's responses to fee petition and motion for adverse tax consequences	2.80	500.00	1,400.00

5/29/20	Review all case law cited in Defendant's responses and Plaintiff's replies	2.20	500.00	<u>1,100.00</u>
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Total Attorney Fees: \$ 19,775.00

Paralegal Fees

4/20/20	Update Reponse to Defendant's Motion for New Trial or Remittitur and filed with Court via CM/ECF	0.50	175.00	87.50
4/24/20	Update legal fees and costs accounting; review/update Petition for Attorney Fees and Costs, Declarations of Jeffrey Needle, Susan Mindenbergs, and Christine Thomas	3.50	175.00	612.50
5/5/20	Prepare notes/organize parties' discovery responses and emailed to V. Vreeland	2.00	175.00	350.00
5/6/20	Review Vanguard Rollover IRA account fund information from client; email/call to client regarding additional account information; review aforesaid IRA statements and Albertsons, LLC 401(k) Plan statements regarding rollover funds and account distributions; notes for file	2.00	175.00	350.00
5/6/20	Start preparing Declaration of Kimberly Johnson regarding Plaintiff's Motion for Adverse Tax Consequences and Prejudgment Interest	0.75	175.00	131.25
5/7/20	Review and update Motion for Adverse Tax Consequences and Prejudgment Interest; finish preparing draft Declaration of Kimberly Johnson and corresponding exhibits; update Declaration of Susan Mindenbergs and corresponding exhibit; prepare [Proposed] Order pertaining to aforesaid Motion; email documents to J. Needle	4.50	175.00	787.50
5/7/20	Prepare [Proposed] Order Granting Plaintiff's Petition for Attorney Fees and Costs; email to J. Needle	0.50	175.00	87.50
5/8/20	Update Petition for Attorney Fees and Costs; update Declaration of Christine Thomas and Declaration of Jeffrey Needle with exhibits; Review Declaration of Victoria Vreeland	1.75	175.00	306.25
5/11/20	Update Declaration of Christine Thomas and Declaration of Susan Mindenbergs with exhibits for Petition for Attorney Fees and Costs; updated Petition and emailed to J. Needle	2.25	175.00	393.75

5/12/20	Update and email copies of Motion for Adverse Tax Consequences and Prejudgment Interest, [Proposed] Order, and Declarations of Paul Torelli, Kimberly Johnson, and Susan Mindenbergs with corresponding exhibits to J. Needle	3.25	175.00	568.75
5/13/20	Update Petition for Attorney Fees and Costs, [Proposed] Order, Declarations of Susan Mindenbergs and Jeffrey Needle with corresponding exhibits; email aforesaid documents to J. Needle	2.00	175.00	350.00
5/14/20	Update Petition for Attorney Fees and Costs, [Proposed] Order, Declarations of Susan Mindenbergs, Jeffrey Needle, and Christine Thomas with corresponding exhibits; filed aforesaid documents with Court via CM/ECF; emailed aforesaid Order to Judge	3.00	175.00	525.00
5/14/20	Update Motion for Adverse Tax Consequences and Prejudgment Interest; filed Motion along with Declarations of Paul Torelli, Kimberly Johnson, and Susan Mindenbergs with corresponding exhibits and [Proposed] Order with Court via CM/ECF; emailed aforesaid Order to Judge	4.00	175.00	700.00
5/27/20	Update legal fees and costs incurred subsequent to 04/20/20 pertaining to Plaintiff's Reply to Defendant's Response to Plaintiff's Petition for Attorney Fees and Costs	2.00	175.00	350.00
5/28/20	Update Reply to Defendant's Response to Plaintiff's Petition for Attorney Fees and Costs and Declarations of Jeffrey Needle and Susan Mindenbergs with corresponding exhibits	4.00	175.00	700.00
5/28/20	Update Reply to Defendant's Response to Plaintiff's Motion for Adverse Tax Consequences and Prejudgment Interest and Declarations of Susan Mindenbergs and Paul Torelli with corresponding exhibits	3.50	175.00	612.50
5/29/20	Finalize replies and file along with corresponding documents with Court via CM/ECF	0.50	175.00	<u>87.50</u>

Total Paralegal Fees: \$ 7,000.00

Costs

5/26/20	Vreeland Invoice - Expert Witness for Petition for Attorney Fees and Costs	13,200.00
5/27/20	Torelli Invoice - Expert Witness for Motion for Adverse Tax Consequences and Prejudgment Interest	<u>3,612.50</u>

Total Costs:	<u>\$ 16,812.50</u>
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TOTAL FEES AND COSTS:	\$ 43,587.50
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Declaration of Susan B. Mindenbergs

Exhibit 3



VREELAND LAW

PLLC

City Center Bellevue
500 108th Avenue NE, Suite 740
Bellevue, WA 98004
Main 425-623-1300

Jeff Needle

Statement Date:
Statement No.
Account No.

May 26, 2020
5381
2301.01
Page: 1

RE: Johnson v. Albertsons - Expert Fee Petition

Interim Statement

Fees

			Hours	
04/25/2020	VLV	Emails and attachments from Needle; quick overview. (no charge)	0.30	n/c
04/26/2020	VLV	Call with Needle/disclosure. (no charge)	0.10	n/c
04/27/2020	VLV	Begin overview of pleadings, notes for opinions.	0.70	420.00
05/04/2020	VLV	Review of draft petition, notes. Overview of supporting declarations, notes for analysis. Begin review of various pleadings (post-trial motion, portions of reply). Emails to obtain additional information. Review of court docket. Email with inquiries to plaintiff's counsel, request for additional pleadings and documents. Follow up from Jeff. Begin review of additional pleadings. Email Jeff re additional inquiries and requests for documents, discovery. Commence draft of declaration.	6.40	3,840.00
05/05/2020	VLV	Continue review of documents, emails with plaintiff's counsel, development of opinions, drafting of Declaration. Follow up emails with plaintiff's counsel. Review additional discovery pleadings, correspondence.	4.80	2,880.00
05/06/2020	VLV	Continue review and drafting declaration.	0.90	540.00
05/07/2020	VLV	Continue review and drafting declaration and attachments. Research more recent fee awards; review various court orders and fee awards, case law.	7.90	4,740.00
05/08/2020	VLV	Identify exhibits, coordinate with Leth. Updating emails with Susan, Christine. Couple corrections to Declaration.	0.30	180.00
05/11/2020	NJL	Communications with Vreeland re: Declaration and exhibits; review, revise Vreeland Declaration re: plaintiff's petition for costs and fees. (no charge)	1.60	n/c
	VLV	Review updated Declaration of SM, respond. Coordinate for final with Leth, emails re same.	0.20	120.00
05/12/2020	NJL	Prepare exhibits to Vreeland Declaration; research valid declaration signatures in federal court due to COVID-19, and update Vreeland re: same; finalize Vreeland Declaration, and forward same and exhibits to counsel. (no charge)	1.40	n/c

Jeff Needle

Statement Date: 05/26/2020
Statement No. 5381
Account No. 2301.01

			Hours	
	VLV	Review and edits from Thomas, final review and revisions. Coordinate for signature, delivery of all via Leth to counsel.	0.80	480.00
05/14/2020	NJL	Revise Vreeland Declaration with corrections, and forward same to attorney's office. (no charge)	0.10	n/c
		For Current Services Rendered	22.00	13,200.00

Recapitulation

<u>Timekeeper</u>	<u>Hours</u>	<u>Rate</u>	<u>Total</u>
Victoria L. Vreeland	22.00	\$600.00	\$13,200.00

Total Current Work 13,200.00

Balance Due \$13,200.00

Billing History

<u>Fees</u>	<u>Hours</u>	<u>Expenses</u>	<u>Advances</u>	<u>Finance Charge</u>	<u>Payments</u>
13,200.00	22.00	0.00	0.00	0.00	0.00

A service charge of 1% per month will be assessed on all past due accounts.

VL
VREELAND LAW
PLLC

City Center Bellevue
500 108th Avenue NE, Suite 740
Bellevue, WA 98004
Main 425-623-1300

Jeff Needle

Account Summary and Remittance

Previous Balance	Fees	Expenses	Advances	Payments	Balance
2301-01 Johnson v. Albertsons - Expert Fee Petition					
0.00	13,200.00	0.00	0.00	0.00	<u>\$13,200.00</u>

Please include this page with your remittance.

A service charge of 1% per month will be assessed on all past due accounts.

Please Charge \$_____ on the following:

☐ Visa ☐ MasterCard ☐ Discover

Card Number

Exp. Date (required)

Card Holder Signature

Security Code

Amount Remitted _____

Check No. _____

Statement Date 05/26/2020

Account No. 2301.01

Quantitative Social Science LLC

200 1st Ave West, Suite 109
Seattle, WA 98119
USA
Phone: (206) 384-7072

**INVOICE**

Invoice Number: 1064
Invoice Date: 05/27/20
Page(s): 1

Engagement:
Kimberly Johnson
Work Performed By:
Dr. Paul A. Torelli Chief Economist Quantitative Social Science

Bill To:
Susan Mindenbergs Law Office of Susan B. Mindenbergs 705 2nd Ave Ste 1050 Seattle, WA 98104 USA Phone: (206) 447-1560

Payment Terms	Due Date
Due at end of next month	06/30/20

ITEMIZED DESCRIPTION OF WORK PERFORMED			
Date	Hrs	Task	Explanation
5/26/20	4	Research	Review new files; call with counsel; research; outline rebuttal
5/27/20	4.5	Report Drafting	Draft rebuttal report
5/1/20 to 5/27/20:			
Standard Hours:			8.5
Standard Hourly Rate:			\$425.00
Standard Total:			\$3,612.50
TOTAL DUE:			\$3,612.50

Payment
Please make check payable to 'Quantitative Social Science' and mail to: Quantitative Social Science LLC 200 1 st Ave West, Suite 109 Seattle, WA 98119